

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

AGL RESOURCES INC., NICOR INC., and )  
NORTHERN ILLINOIS GAS COMPANY )  
d/b/a NICOR GAS COMPANY )  
 ) Docket No. 11-0046  
Application for Approval of a Reorganization )  
pursuant to Section 7-204 of the Illinois Public )  
Utilities Act. )

**JOINT APPLICANTS’  
POST-TRIAL REPLY BRIEF  
REGARDING OPERATING AGREEMENT ISSUES**

Dated: July 12, 2011

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AGL Resources Inc. (“AGL Resources”), Nicor Inc. and Northern Illinois Gas Company d/b/a Nicor Gas Company (“Nicor Gas”) (collectively “Joint Applicants”) hereby file with the Illinois Commerce Commission (“Commission”) this Post-Trial Reply Brief Regarding Operating Agreement Issues in accord with the procedural schedule established by the Administrative Law Judge (“ALJ”).

## **I. INTRODUCTION**

The Joint Applicants’ proposed Operating Agreement (“Proposed Operating Agreement”) meets the requirements of Sections 7-101, 7-204 and 7-204A of the Public Utilities Act (the “Act”) and should be approved by the Commission. 220 ILCS 5/7-101, 7-204, 7-204A. In accordance with the Act, the Joint Applicants and the Commission’s Staff (“Staff”) have agreed to provisions in the Proposed Operating Agreement that ensure that customers do not subsidize unregulated activities or pay unreasonable utility costs when a utility receives services from an affiliate. After two years of proceedings, the Joint Applicants have resolved all issues but one with Staff relating to the Commission’s approval of the Proposed Operating Agreement. The Initial Briefs of the Joint Applicants and Staff highlight the many areas of agreement among the parties. Joint Applicants’ Init. Br. at 8-9; Staff Init. Br. at 6-15. The Joint Applicants also have resolved all of the competitive concerns of the Retail Energy Supply Association (“RESA”) and Interstate Gas Supply of Illinois (“IGS”) concerning customer choice and competition related to the Proposed Operating Agreement and other issues. As a result, RESA, IGS and the Manchester Group, LLC (“Manchester”) have withdrawn their testimony. Given these resolutions, the Commission is presented with a single disputed issue between Staff and Nicor Gas: Whether Nicor Gas should be allowed under the Proposed Operating Agreement to

continue to use its call center<sup>1</sup>, with full disclosure and fair compensation to the utility, to help market affiliate products after completion of a utility-related call.

The Joint Applicants propose to retain the call center practices that have been used and approved for years, and have demonstrated that those call center activities have been and remain consistent with the Act and Commission rules. Further, the Joint Applicants have demonstrated that the call center services at issue are reasonable, contain the appropriate disclosures, provide a customer with the choice of listening about products from affiliates, and generate revenues that ultimately serve to *reduce* Nicor Gas' rates. On the other hand, Staff seeks changes to the manner in which Nicor Gas has operated for over a decade.

Staff's concern does not address the manner in which Nicor Gas conducts its business. Rather, Staff witness Sackett does not like a product that has been offered to, and purchased by hundreds of thousands of customers for more than a decade—Nicor Energy Services Company's ("Nicor Services") Gas Line ComfortGuard ("GLCG") warranty product. As demonstrated in the Joint Applicants' Initial Brief, Staff witness Sackett improperly seeks to substitute his opinion for that of the competitive marketplace. Joint Applicants' Init. Br. at 21-22. Indeed, not only does Mr. Sackett dislike the GLCG product, he dislikes similar products that are available to consumers in the competitive market. May 23, 2011 Tr. at 305. Such opinions have no basis in this proceeding. Nevertheless, because of his subjective dislike for the product, Mr. Sackett proposes that Nicor Gas should be precluded from offering customers the opportunity to hear about GLCG and other affiliate products. There is no legal or factual basis to support this position. As the Joint Applicants demonstrated in their Initial Brief, and as further explained below, Staff's position is without merit and should be rejected.

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<sup>1</sup> As discussed herein, any reference to Nicor Gas' call center includes both Nicor Gas' own call center, as well as the call center business operated by its affiliate IBT Solutions ("IBT").

The Office of the Illinois Attorney General (“AG”) and the Citizens Utility Board (“CUB”) (collectively “AG/CUB”) similarly attack the GLCG warranty product, arguing that it is not a “legitimately necessary service.” AG/CUB Init. Br. at 5. AG/CUB even go so far as to argue that the Commission should mandate the termination of the GLCG service for the more than 400,000 customers who have it. *Id.* at 22. Of course, the Commission does not have the legal authority to terminate a product that is not subject to its regulation. Like Staff, AG/CUB’s claims are legally incorrect and factually flawed. Their attempt to substitute the subjective opinion of their witness, Mr. Effron, for that of the marketplace should be rejected.

Here, the evidence demonstrates that:

- GLCG is a warranty product that assists homeowners with repairs to gas leaks on pipes in the home interior, appliance connections and shut off valves (O’Connor Dir., Nicor Gas Ex. 1.0, 12:256-57);
- GLCG has been offered for more than a decade and, as of 2009, approximately 440,000 Nicor Gas residential customers were GLCG customers (O’Connor Reb., Nicor Gas Ex. 2.0, 26:568, 56:1257);
- Nicor Gas has been offering customer solicitation services in support of GLCG for more than ten years consistent with its Commission-approved Operating Agreements (*Id.* at 26:573-75);
- GLCG receives a remarkably low level of customer complaints (*Id.* at 40:899-42:937);
- GLCG provides a valuable public safety service by addressing the serious dangers posed by gas leaks within a home due to faulty brass connectors and damage to internal gas piping (Erickson Reb., Nicor Gas Ex. 3.0, 10:253-60);
- Through GLCG, Nicor Services has replaced more than 20,000 uncoated brass appliance connectors in the homes of its customers, performed more than 65,000 other repairs, and inspected another 11,000 homes (*Id.* at 6:173-76);
- An affiliate of the Peoples Gas Light & Coke Company (“Peoples Gas”) offers a product—the Pipeline Protection Plan (“PPP”)—that is similarly priced to GLCG and sold through similar solicitation services provided by the utility (Ros Reb., Nicor Gas Ex. 4.0, 16:389-91; O’Connor Sur., Nicor Gas Ex. 5.0, 21:455-57; Staff Group Cross Exhibit 1 (SDR-1, SDR-3 and SDR-4));

- The Commission has recently considered and approved Peoples Gas affiliate agreements under which Peoples Gas provides solicitation services for PPP (O'Connor Sur., Nicor Gas Ex. 5.0, 21:455-60); and
- Nicor Gas is under no obligation to repair customer-owned facilities located in the home at all, as provided in Nicor Gas' Commission-approved tariffs and recognized by the Illinois Supreme Court. *Northern Illinois Gas Company*, Ill.C.C. No. 16 – Gas, 3rd Revised Sheet No. 35; *Adams v. Northern Illinois Gas Company*, 211 Ill. 2d 32, 48 (2004).

Clearly, the marketplace has spoken in favor of the GLCG product and the subjective opinions of Staff witness Sackett and AG/CUB witness Effron should not be substituted for those of hundreds of thousands of customers, particularly where the Commission has previously approved the utility's support of the product, the product serves the public interest, and the legal obligation of the utility does not extend to offering a similar product or services. Accordingly, their attempt to limit customer choice and preclude Nicor Gas' call center from providing solicitation services to its affiliates under the Proposed Operating Agreement should be rejected.

\* \* \* \* \*

The Commission should reject the invitation by Staff and AG/CUB to improperly turn the Commission's review of the Proposed Operating Agreement into a referendum of the GLCG product. The evidence demonstrates that the Proposed Operating Agreement meets the requirements of the Act, protects Nicor Gas' customers and is in the public interest. Accordingly, for the reasons set forth in the Joint Applicants' Initial Brief and below, the Commission should approve the Proposed Operating Agreement as set forth in Nicor Gas Exhibit 7.1 with Joint Applicants' Proposed Section 2.2(e).

## **II. ARGUMENT**

### **A. The Law Supports Approval of the Proposed Operating Agreement and Nicor Gas' Continued Provision of Call Center Services under that Agreement**

#### **1. The Joint Applicants' Proposal Satisfies the Public Interest Standard under the Applicable Sections of the Act**

The Joint Applicants have demonstrated that the Proposed Operating Agreement, including Nicor Gas' proposed Section 2.2(e) relating to the continued provision of call center services, satisfies all applicable requirements of the Act—specifically, Sections 7-101, 7-204(b)(2)-(3) and 7-204A(b), as well as Section 7-102 to the extent required. Under Section 7-101(3) of the Act, the Commission may condition approval of affiliate agreements “in such manner as it may deem necessary to safeguard the public interest.” Sections 7-204(b)(2) and 7-204(b)(3) require the Commission to ensure that the utility's customers are not subsidizing affiliate activities, or paying unreasonable charges for services from affiliates. Finally, Sections 7-102 and 7-204A(b) require the Commission to protect the public interest in reviewing and approving affiliate transactions. Therefore, in this proceeding, the Commission's review and approval of the Proposed Operating Agreement is primarily intended to ensure that Nicor Gas' customers are not taken advantage of by inappropriately subsidizing non-utility activities. The Commission should approve the Proposed Operating Agreement because the evidence demonstrates that it satisfies each applicable section of the Act. The Commission's approval of the Proposed Operating Agreement also finds support in the Commission's prior approval of Nicor Gas' current Operating Agreement, as well as its recent consideration and approval of Peoples Gas affiliate agreements under which Peoples Gas provides solicitation services for the PPP warranty product offered by an affiliate of Peoples Gas. O'Connor Sur., Nicor Gas Ex. 5.0, 21:455-60.

Staff and AG/CUB agree that the relevant law to be applied here is Section 7-101(3). Staff Init. Br. at 4; AG/CUB Init. Br. at 4, 21. Under Section 7-101(3), the “Commission may condition [its] approval in such manner as it may deem necessary to safeguard the public interest.” 220 ILCS 5/7-101(3). This section of the Act “was devised to insulate public utilities from financial exploitation, for the benefit of those served by the utilities.” *Estate of Besinger v. Village of Carpentersville*, 258 Ill. App. 3d 218, 225 (2d Dist. 1994) (discussing Section 8a(3) of the Public Utilities Act, which was subsequently codified, as amended, at 220 ILCS 5/7-101(3)), citing *People v. Phelps*, 67 Ill. App. 3d 976, 979 (5th Dist. 1978). There is no dispute that the Joint Applicants and Staff have agreed to pricing provisions in the Proposed Operating Agreement that satisfy these requirements by ensuring that customers do not subsidize unregulated activities or pay unreasonable utility costs for services the utility receives from an affiliate.

## **2. Nicor Gas is not Legally Obligated to Repair Customer-Owned Facilities**

AG/CUB and Staff seek to have the Commission impose obligations on Nicor Gas that are flatly contrary to law. In particular, AG/CUB argue that the Act’s requirement that the utility provide safe and reliable gas distribution service somehow requires Nicor Gas to provide repair services for customer-owned facilities. AG/CUB Init. Br. at 29. Although Staff concedes that “Nicor Gas is not responsible for making repairs to customer facilities,” Staff argues that the utility should nevertheless ensure that all ratepayers are aware of the utility’s repair and inspection services extending to such customer-owned facilities. Staff Init. Br. at 19, 22. Both positions are contrary to Illinois law.

Under Illinois law, Nicor Gas does not have a legal duty to inspect customer-owned equipment inside a residence and, when there is a known gas leak, Nicor Gas’ duty is limited to



making the residence safe by shutting off gas service at the meter. *See Adams v. Northern Illinois Gas Company*, 211 Ill. 2d 32, 48, 63 (2004). In *Adams*, the Illinois Supreme Court recognized “the common law rule that a gas company has no duty with respect to a consumer’s gas pipes and fittings, based on the consumer’s responsibility for his or her equipment, and the company’s lack of knowledge and control.” *Id.* at 71. As a result, customers must arrange for inspection and repair of their appliance connectors and for repair of leaks on gas piping downstream of the meter. *Erickson Reb.*, Nicor Gas Ex. 3.0, 7:186-87. Through GLCG, Nicor Services has provided these important repairs and inspections to tens of thousands of households. *Id.* at 7:188-89. Based upon his extensive experience in the industry, Nicor Gas witness Erickson—Vice President of the American Public Gas Association—testified that such limitations on a gas utility’s legal duty and responsibility for repair of customer piping and appliance connectors are customary in the gas utility industry. *Id.* at 7:189-91.

The foregoing underscores one of the principal reasons for the GLCG product to be appropriately sold by an affiliated company and not the utility—the repair work does not apply to utility-owned facilities. Instead, it applies to customer-owned gas piping as to which Nicor Gas has no obligation to maintain, inspect or repair. *O’Connor Sur.*, Nicor Gas Ex. 5.0, 23:513-24:514. This arrangement makes sense because Nicor Gas does not install or have control over those facilities. *Id.* at 24:514-15. While Nicor Gas may undertake to inspect or repair customer-owned gas piping at the request of a customer, Nicor Gas should not be placed in a position in which it could be held responsible generally for the condition of customer-owned gas piping. *Id.* at 24:515-18. To the extent that Nicor Gas does provide such repairs, it does so as an accommodation depending upon the availability of materials, the technician’s time and expertise, and the customer’s willingness to pay the repair charges. *See O’Connor Reb.*, Nicor Gas Ex. 2.0, 43:970-74. Thus, Nicor Gas technicians do not provide such repair services as a core business

function and certainly are not available to make necessary repairs “on the spot” as claimed by AG/CUB. AG/CUB Init. Br. at 23, 28.

Nicor Gas does not have any tariff mandating that it provide inspection or repair services to customers. O’Connor Sur., Nicor Gas Ex. 5.0, 24:518-19. On the contrary, Nicor Gas’ filed tariffs contain provisions that make clear the very limited nature of Nicor Gas’ duty regarding customer piping and appliance connectors. O’Connor Reb., Nicor Gas Ex. 2.0, 30:654-55. The terms and conditions of the tariff provide, *inter alia*, that the utility “has no responsibility for the design, installation, operation, maintenance, or condition of the Customer’s equipment, and the Company shall have no liability or responsibility to the Customer or third parties for any claims loss, injury, or damages whatsoever resulting there from or in connection therewith.” Northern Illinois Gas Company, Ill.C.C. No. 16 – Gas, 3rd Revised Sheet No. 35. And, of course, Nicor Gas’ tariff has the force of law. *Sheffler v. Commonwealth Edison Co.*, 2011 Ill. LEXIS 1099, at \*16 (Ill. June 16, 2011) (“Once the Commission approves a tariff, the tariff is a law, not a contract, and has the force and effect of a statute.”) (internal quotation marks and citation omitted).

Contrary to the assertions of Staff and AG/CUB, Illinois law imposes no obligation on Nicor Gas to provide repair services to customer-owned facilities—whether through GLCG or otherwise. For Nicor Gas to offer GLCG—or similar services through some other product—under a Commission mandate, the utility would need to assume the risk associated with offering what is tantamount to an insurance-type product on customer-owned facilities. O’Connor Reb., Nicor Gas Ex. 2.0, 51:1151-55. This is not a risk that Nicor Gas is required to assume, nor one that ratepayers should be liable for. *Id.* at 51:1153-52:1157. It would not be prudent for Nicor Gas, and by extension its ratepayers, to assume this insurance-type risk. The Act’s goal of providing utility ratepayers with reliable service at reasonable rates is best served by limiting the

utility's duty to provide repair services for customer-owned facilities, not requiring it to do so. Accordingly, Nicor Gas' exposure to potential liabilities for damages and injuries caused by customer-owned gas pipes and appliances should continue to be limited as they currently are under Nicor Gas' tariffs and Illinois law.

**3. AG/CUB Improperly Seek to Have the Commission Regulate a Competitive Product over Which the Commission has no Jurisdiction**

There is nothing in the Act granting the Commission jurisdiction to second-guess or regulate the terms of a legal product—such as GLCG—offered by an unregulated utility affiliate. Nevertheless, AG/CUB improperly attempt to extend the Commission's jurisdictional reach under Section 7-101 to permit such regulation. For example, AG/CUB argue that the Commission has authority under Section 7-101 to (1) treat GLCG as a utility service with its price based on cost of service, (2) treat the GLCG margin as a credit to the Nicor Gas utility revenue requirement, and (3) require Nicor Services to pay a royalty to Nicor Gas. AG/CUB Init. Br. at 29-30. There is no legal authority to support such actions by the Commission.

In reality, AG/CUB is asking the Commission to commit legal error. The Commission has no jurisdiction over the GLCG product, and it should reject the request of AG/CUB to extend its authority to this product. "The Commission derives its power and authority solely from the statute creating it, and it may not, by its own acts, extend its jurisdiction." *Peoples Energy Corp. v. Illinois Commerce Comm'n*, 142 Ill. App. 3d 917, 923 (1st Dist. 1986). So, while Section 7-101 of the Act "broadens the Commission's regulatory authority to encompass holding companies and other affiliated interests when they engage in transactions with public utilities, it does not give the Commission plenary authority over affiliated interests." *Id.* at 923.

#### **4. GLCG is Subject to Regulation by the Department of Insurance**

There is no need for the Commission to extend its jurisdictional reach where the product at issue is already subject to regulatory oversight by the Illinois Department of Insurance, which focuses on consumer protection considerations such as disclosure of contract terms and cancellation rights. O'Connor Reb., Nicor Gas Ex. 2.0, 31:697-709, 56:1267-57:1270; 215 ILCS 152/1 *et seq.* There has been no showing here that the Department of Insurance has ever taken any enforcement action with respect the GLCG product. Neither Staff nor AG/CUB argue that the GLCG product is not in compliance with the Illinois Service Contract Act, 215 ILCS 152/1 *et seq.*, which applies to the product at issue here. Indeed, Staff entirely ignores this applicable statutory structure and AG/CUB merely argue that the Department of Insurance oversight does not “pre-empt the Commission’s authority under the PUA to condition a utility’s operating agreement to ensure such agreement safeguard[s] the public interest.” AG/CUB Init. Br. at 24-25. AG/CUB’s argument misses the point—there is no authority under the Act for the Commission to regulate the affiliate’s product and there is no evidence that the agency responsible for regulating GLCG has any concerns with the product.

Further, the Service Contract Act specifically delineates the disclosures that must be made regarding products like GLCG, none of which include the type of information that Staff and AG/CUB ask the Commission to mandate with respect to GLCG, such as availability of Nicor Gas technicians to make repairs, repair frequency percentage and average cost of repairs. Staff Init. Br. at 19-23; AG/CUB Init. Br. at 28-29. Instead, the Service Contract Act requires the following disclosures:

Sec. 30. Required service contract disclosures. All service contracts issued or sold in this State shall contain the following disclosures written in clear and understandable language.

(1) the name and address of the service contract provider;

- (2) the total consideration for the service contract paid by the service contract holder;
- (3) the conditions and procedures for obtaining service under the service contract, including the name, address, and local or toll-free telephone number of any person from whom approval is required before covered repairs may be commenced;
- (4) the existence and amount of a deductible, if any;
- (5) merchandise and services to be provided and any limitations, exceptions, or exclusions;
- (6) the terms, conditions, and restrictions governing transferability of the service contract, if any;
- (7) the provisions governing cancellation and refunds in accordance with Section 35 of this Act; and
- (8) whether or not the service contract covers failure resulting from normal wear and tear.

215 ILCS 152/30. The statutorily required disclosures are made in the GLCG Terms and Conditions. *See* Staff Ex. 2.0, Attach. B. The Department of Insurance does not require the types of disclosures proposed by Staff and AG/CUB, and the Commission should not require them either, particularly where the disclosures requested by Staff and AG/CUB are so patently excessive. *See, e.g., In re African-American Slave Descendants Litig.*, 471 F.3d 754, 762-63 (7th Cir. 2006) (“It is true that under no consumer protection law known to us, whether a special statute or a doctrine of the common law of contracts or torts, has a seller a general duty to disclose every discreditable fact about himself that might if disclosed deflect a buyer.”).

Nor can the Commission order the “termination” of current enrollments in GLCG as requested by AG/CUB. AG/CUB Init. Br. at 29. The Commission simply does not have the legal authority to terminate hundreds of thousands of contracts that are not subject to its regulation. Such termination would, in turn, create hundreds of thousands of customers with actions available to them under various legal theories for the improper termination.

## **5. The Illinois-American Water Company Order is Inapplicable**

AG/CUB argue that Section 7-101 of the Act authorizes the Commission “to condition approval of the operating agreement on ending Nicor Gas’ marketing and involvement with GLCG.” AG/CUB Init. Br. at 21. Staff similarly argues that the Commission should determine not to allow call center solicitation of GLCG by Nicor Gas to continue. Staff Init. Br. at 4-5. The only authority Staff and AG/CUB provide in support of their arguments not to allow call center solicitation to continue under the Operating Agreement is the Commission’s decision in Illinois-American Water Company Docket No. 02-0517 (“*IAWC*”). Staff Init. Br. at 4-5; AG/CUB Init. Br. at 21-25. The Joint Applicants demonstrated in their Initial Brief that the *IAWC* Order is inapplicable here. Joint Applicants’ Init. Br. at 36-38.

The *IAWC* Order did not involve Nicor Gas, its operating agreement, or GLCG. Moreover, the facts and circumstances in that case were very different from the evidence here. In that proceeding, an affiliate of IAWC wanted to offer—but had not yet rolled out—an in-home water line protection warranty program for the customer-owned portion of the water line, and IAWC sought Commission approval of an affiliate agreement to allow it to provide services for its affiliate in support of the water line protection program. Docket No. 02-0517, Order on Reopening at 3 (Sept. 16, 2003). Here, the Commission is considering relatively minor amendments to an operating agreement that it has previously determined to be in the public interest. Also, contrary to the facts in *IAWC*, the evidence here shows that the GLCG product offering has a long and proven track record in the marketplace, having been offered since 1999, with a large and satisfied customer base of more than 400,000 customers who have made few complaints about the product. O’Connor Reb., Nicor Gas Ex. 2.0, 26:568, 40:899-42:937, 56:1257.

Staff and AG/CUB argue that, like in *IABC*, there is no evidence here that GLCG is “properly priced” or “legitimately necessary.” Staff Init. Br. at 4-5; AG/CUB Init. Br. at 22. The marketplace provides the best evidence that a product is priced appropriately and is needed. The Joint Applicants have demonstrated that the marketplace has spoken in favor of GLCG with more than 400,000 customers purchasing the product over a period of more than ten years. O’Connor Reb., Nicor Gas Ex. 2.0, 26:568, 40:899-42:937, 56:1257. In addition, the Joint Applicants have provided strong economic support that the pricing of GLCG is completely appropriate. *See, e.g.*, Ros Reb., Nicor Gas Ex. 4.0, 16:368-17:410. For example, the evidence shows that GLCG is priced similarly to similar products offered in the marketplace. *Id.* at 16:387-88. The PPP offered by an affiliate of Peoples Gas is currently priced at \$2.95 per month and covers up to \$300 in repair costs. *See* Nicor Gas Ex. 4.2. GLCG covers up to \$600 in repairs per occurrence and is priced at \$4.95 per month. Ros Reb., Nicor Gas Ex. 4.0, 17:393-94. Another similar service is Santanna Energy Service’s Gas Line Guard which is priced at \$4.95 per month, same as GLCG, allows for up to \$1,000 in repairs per call, but limits the annual coverage to \$3,000. *Id.* at 17:395-97. GLCG has no annual limit on the amount of coverage provided. *See* Nicor Gas Ex. 4.4. Further, the Joint Applicants have demonstrated that the offering of GLCG serves an important public safety need of addressing the hazards of leaking, customer-owned gas pipes (which are altogether different than whatever hazards may be presented by leaking water pipes). Erickson Reb., Nicor Gas Ex. 3.0, 10:253-60.

Thus, unlike in *IABC*, the Commission is not being asked to “simply accept” the utility’s assertions that the affiliate’s product is in the public interest. Docket No. 02-0517, Order on Reopening at 16 (Sept. 16, 2003). Rather, the evidentiary record here contains more than a decade’s worth of actual GLCG product history upon which the Commission can rely—and which Staff and AG/CUB fail to refute.

Importantly, in *IAWC*, the Commission explicitly recognized that an appropriate analysis could have been done “justifying the offering of the [affiliate’s product] to Illinois rate payers”. Docket No. 02-0517, Order on Reopening at 16 (Sept. 16, 2003). Here, the Joint Applicants have more than justified the offering of the GLCG product to consumers through the submission of substantive evidence that the product actually has been accepted in the marketplace for many years, has a large customer base and has generated very few complaints. For this, and all the other reasons articulated in their Initial Brief and herein, the Joint Applicants request that the Commission approve the Proposed Operating Agreement as in the public interest, including the call center solicitation in support of Nicor Gas’ affiliate’s products.

As a final matter, to the extent that *IAWC* was an extension of the Commission’s regulatory authority beyond the terms and conditions of the affiliate relationship to the terms and conditions of the unregulated service itself—and *IAWC* need not be so read—the Joint Applicants submit that it would be erroneous and unlawful. There is nothing in the Act granting the Commission jurisdiction to second-guess or regulate the terms of a legal product offered by a utility affiliate, especially one regulated by another agency.

**B. The Facts Support Approval of the Proposed Operating Agreement and Nicor Gas’ Continued Provision of Call Center Services under that Agreement**

**1. The Practices at Issue Have Been in Place for More than a Decade and Benefit Ratepayers**

Staff and AG/CUB ask the Commission for a major change to current practices. Nicor Gas has been providing Nicor Services with certain sales solicitation services in support of GLCG for more than a decade in accordance with its Commission-approved operating



agreements.<sup>2</sup> O'Connor Reb., Nicor Gas Ex. 2.0, 26:573-75. Customers have a high degree of satisfaction with GLCG as shown by the fact that very few complaints have ever been made by GLCG customers. O'Connor Reb., Nicor Gas Ex. 2.0, 42:938-41.

Indeed, ratepayers benefit under the current arrangement, which the Joint Applicants seek to continue under the Proposed Operating Agreement, because Nicor Gas' costs of operating the call center are reduced. O'Connor Dir., Nicor Gas Ex. 1.0, 12:243-47. For example, when call center representatives engage in services supporting GLCG, Nicor Gas "can charge out some of the costs associated with the buildings and the telephone lines, et cetera." May 23, 2011 Tr. at 216. And the staffing level at the call center is no more than what is needed to support the operation of the utility and any call center work for Nicor Services generates revenue that covers costs that would otherwise be borne by ratepayers for the same level of call center staffing. May 23, 2011 Tr. at 242-43.

Further, Peoples Gas provides support services for PPP that are quite similar to those that Nicor Gas provides for GLCG, *i.e.*, sales solicitation, repairs and billing. O'Connor Sur., Nicor Gas Ex. 5.0, 21:455-57; Staff Group Cross Exhibit 1 (SDR-1, SDR-3 and SDR-4). The Commission has considered and approved Peoples Gas/North Shore Gas Company affiliate agreements in several dockets since the Integrys merger and has not prohibited Peoples Gas from providing support services for PPP. O'Connor Sur., Nicor Gas Ex. 5.0, 21:458-60.

## **2. GLCG Provides Value**

The evidence shows that the GLCG product provides an important public safety service. Nicor Gas witness Erickson testified that GLCG addresses the serious dangers posed by gas

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<sup>2</sup> The current Operating Agreement approved by the Commission in Docket No. 00-0537 superseded Nicor Gas' prior operating agreement approved by the Commission in 1976 in Docket No. 60256. Docket No. 00-0537, Order at 1 (Sept. 26, 2001).

leaks within a home due to faulty brass connectors and damage to internal gas piping. Erickson Reb., Nicor Gas Ex. 3.0, 10:253-60. Nicor Services' records show that under the GLCG program, Nicor Services has replaced more than 20,000 uncoated brass appliance connectors in the homes of its customers, performed more than 65,000 other repairs, and inspected another 11,000 homes. *Id.* at 6:173-76. Repair work and connector replacements are important for the safety of customers. *Id.* at 6:176-77. Unremedied, these conditions are very hazardous, as they can result in dangerous gas leaks, fires, and explosions that cause death, injury, and property damage. *Id.* at 6:177-79. Because GLCG is available to consumers at a modest price, it provides a significant incentive for customers to purchase this important service. *Id.* at 6:179-7:181.

### **3. There is a Substantial and Competitive Market for GLCG**

Contrary to Staff's (Init. Br. at 24-26) and AG/CUB's assertions (Init. Br. at 25-27), the evidence demonstrates that there is a competitive market for GLCG. While more than 400,000 customers have chosen to purchase the service in Nicor Gas' service territory, more than 1,500,000 customers have elected to obtain these services in other forms, including by self-insuring against possible gas line damage behind the meter. In addition, the competition no longer takes issue with the Proposed Operating Agreement generally or GLCG specifically, and have withdrawn all testimony from this proceeding. *See* Nicor Gas Ex. 8.0.

Nicor Gas witness Ros testified that the GLCG product is competitive because there are other providers of similar products, it is provided in a competitive market, and there is no essential or utility service involved in provision of GLCG. Ros Reb., Nicor Gas Ex. 4.0, 10:220-23. Dr. Ros is an expert in assessing competitive conditions in a market, including specifically with respect to utilities. *Id.* at 1:5-2:48. According to Dr. Ros, competition for the GLCG product falls into two categories: (1) competition from alternative providers offering similar

products that provide warranty and repair services; and (2) competition from customers who choose to “self-insure” against the risk of the loss from gas line repair costs. Ros Reb., Nicor Gas Ex. 4.0, 25:590-601. Nicor Gas provided empirical evidence that self-insurance competes with GLCG in the estimated demand model for GLCG submitted into evidence as Nicor Gas Ex. 7.1. Moreover, there is strong, consistent support in the economic literature for the proposition that self-insurance can and does compete against market insurance, and this principle has been accepted by antitrust agencies. Ros Sur., Nicor Gas Ex. 7.0, 8:176-9:179.

Staff argues that, by including self-insurance in the market analysis, “Nicor Gas can make any market appear competitive” and that “this sham simply covers up the fundamental fact that Nicor Gas and Nicor Services have cooperated to isolate GLCG from competition.” Staff Init. Br. at 26. AG/CUB similarly attacks the inclusion of self-insurance in the competitive analysis of GLCG. AG/CUB Init. Br. at 25-27. While Staff and AG/CUB freely criticize Dr. Ros for admitting he did not have certain information available to him in conducting his analysis, neither Mr. Sackett nor Mr. Effron attempted to obtain the information they say is lacking or prepare an analysis that is even remotely as thorough as that prepared by Dr. Ros and presented in evidence.

Further, the opinions of Staff and AG/CUB witnesses regarding GLCG do not square with consumers’ views. In a competitive market, consumers determine what products are valuable and worthwhile and in their own interest. The 440,000 customers that have purchased this product disagree with Staff and AG/CUB. Moreover, GLCG has been in existence for more than a decade, and the product has a virtually non-existent record of complaints from customers themselves. Notably, unlike the Joint Applicants, neither Staff nor AG/CUB point to any independent evidence to the contrary. Their inability to cite to any compelling evidence to refute

this point is not surprising given that GLCG provides an important public safety service through which Nicor Services has replaced more than 20,000 uncoated brass appliance connectors in the homes of its customers, performed more than 65,000 other repairs, and inspected another 11,000 homes. Erickson Reb., Nicor Gas Ex. 3.0, 6:173-76.

Ironically, AG/CUB maintain their alternative position that, should Nicor Gas be permitted to continue to provide any GLCG services, then the Commission should (1) impute to Nicor Gas revenues from Nicor Services' GLCG product, or (2) require Nicor Services to pay a royalty to Nicor Gas as compensation for the purported competitive advantage Nicor Gas gives to Nicor Services vis-à-vis the GLCG product. AG/CUB Init. Br. at 32-33. In other words, AG/CUB will condone the supposedly anti-competitive provision of services by Nicor Gas in support of GLCG as long as ratepayers get all the economic benefits.

#### **4. Staff and AG/CUB Wrongly Claim that the Commission Should Determine that GLCG is not Properly Priced**

While the price of an unregulated product like GLCG has no bearing whatsoever on the Commission's approval of the Proposed Operating Agreement, the evidence refutes the assertions of Staff and AG/CUB that GLCG is not properly priced. Staff Init. Br. at 23-26; AG/CUB Init. Br. at 22-23. GLCG is not a price regulated product. O'Connor Reb., Nicor Gas Ex. 2.0, 47:1047. Accordingly, the price of GLCG is not dictated by anything other than the competitive marketplace and, assuming the *LAWC* Order even applies here, the marketplace shows that the pricing of GLCG is reasonable as it is priced similarly to similar products offered in the marketplace. Ros Reb., Nicor Gas Ex. 4.0, 16:387-88. One example is Peoples Gas' PPP, which appears to have pricing consistent with the GLCG. *Id.* at 16:389-91. Peoples Gas' PPP is currently priced at \$2.95 per month and covers up to \$300 in repair costs. *See* Nicor Gas Ex. 4.2. GLCG covers up to \$600 in repairs per occurrence and is priced at \$4.95 per month. Ros Reb.,

Nicor Gas Ex. 4.0, 17:393-94. In other words, GLCG provides twice the coverage at less than twice the price. Another similar service is Santanna Energy Service's Gas Line Guard which is priced at \$4.95 per month, same as GLCG, allows for up to \$1,000 in repairs per call, but limits the annual coverage to \$3,000. *Id.* at 17:395-97. GLCG has no annual limit on the amount of coverage provided. *See* Nicor Gas Ex. 4.4. This is market-based evidence that GLCG provides value and is priced in a competitive manner. Ros Reb., Nicor Gas Ex. 4.0, 17:398-99.

#### **5. There is no Evidence of Subsidization of GLCG or of Nicor Services**

The Commission should disregard AG/CUB's argument that Nicor Gas customers are "unfairly subsidizing the provision of GLCG ... as a result of the relationship between Nicor Gas and its affiliate." AG/CUB Init. Br. at 13-17. AG/CUB's claim is belied by the fact that there are no competitors of any Nicor Gas affiliate arguing that any services provided by Nicor Gas to its affiliates are unfair. *See* Nicor Gas Ex. 8.0. The competitors are better positioned to know whether a particular service provides an unfair competitive advantage and they do not make any such claim in this proceeding. Indeed, RESA, IGS and Manchester have withdrawn their testimony from this proceeding because their Stipulation with Joint Applicants "resolves all the issues between the Joint Applicants, RESA and IGS presently pending in this proceeding, Docket No. 11-0046, as well as the issues brought into this proceeding from Docket No. 09-0301." Nicor Gas Ex. 8.0 at 1.

Moreover, AG/CUB offer no compelling evidence that Nicor Gas has subsidized the GLCG product or its affiliate and the record evidence demonstrates the contrary is true. Consistent with the Act, the current Operating Agreement ensures consistent and fair pricing for Nicor Gas' charges to Nicor Services for its services related to the call center. O'Connor Dir., Nicor Gas Ex. 1.0, 10:199-205. And there is no dispute that the Joint Applicants and Staff have

agreed to pricing provisions in the Proposed Operating Agreement that will ensure that Nicor Gas receives a fair and equitable recovery of costs it incurs in providing resources to Nicor Services. Moreover, Nicor Gas customers are not subsidizing affiliate products like GLCG, Ros Reb., Nicor Gas Ex. 4.0, 32:777-33:787, nor will they in the future if the Commission approves the Proposed Operating Agreement.

Staff also raises the notion of “anti-competitive activity such as cross-subsidization of an affiliate” but does not develop the argument. Staff Init. Br. at 25. Nor could Staff reasonably argue that the Proposed Operating Agreement permits subsidization of the affiliate because Staff stipulated to pricing provisions in the Proposed Operating Agreement that will protect against subsidization. *See* Section 5.1(b)(iv) in Joint Applicants Ex. 7.1 at 9-10.

Finally, AG/CUB and Staff continue to argue that the use of Nicor Gas technicians to provide repair services for GLCG customers is somehow unfair or improper. AG/CUB Init. Br. at 13; Staff Init. Br. at 17-18. The Commission should disregard these arguments as moot. It is undisputed that the Joint Applicants have agreed to a modification to the Proposed Operating Agreement that does not authorize Nicor Gas to perform repair services on behalf of its affiliate, Nicor Services, in fulfillment of obligations Nicor Services has to its customers under the GLCG warranty product. Section 2.2(iii)(A) in Joint Applicants Ex. 7.1 at 5-6.

## **6. The Claims by Staff and AG/CUB about GLCG’s Profitability are Irrelevant and Unfounded**

As summarized in AG/CUB’s Initial Brief, “[b]oth Staff witness Sackett and AG/CUB witness Effron concluded that GLCG is a highly profitable product for Nicor Gas affiliate, Nicor Services, based on estimated annual revenues and identified expenses.” AG/CUB Init. Br. at 14. As an initial matter, the Commission should not be evaluating the profitability of a non-regulated product. Even if the *IWOC* Order is somehow applicable to this proceeding, there is nothing

even in the *IAWC* Order that speaks to such a profitability assessment. Rather, that Order speaks to pricing, which the Joint Applicants have demonstrated is reasonable. Moreover, the arguments of Mr. Sackett and Mr. Effron are supported by little more than over-inflated speculation and they ignore publicly available information showing that the total profit for Nicor Inc.'s entire retail group of companies is far less than what their witnesses estimate for GLCG.

In addition, the Joint Applicants demonstrated that the Staff and AG/CUB analyses of the profitability of GLCG are off-base because they discount millions of dollars of costs incurred by Nicor Services. O'Connor Reb., Nicor Gas Ex. 2.0, 48:1066-71. Specifically, they discount the numerous critical services actually provided by Nicor Services to support GLCG, which include: product development, pricing, construction and maintenance of information systems, development of customer terms and conditions, sales channel development, post sales activities, third-party contractor management, billing remittance, credit and collection, risk management, insurance, marketing, licensing, claims administration, Department of Insurance and consumer protection compliance, call center services, legal services and national expansion. O'Connor Reb., Nicor Gas Ex. 2.0, 48:1077-82. They also discount that: (1) Nicor Services' payroll costs of its more than 300 employees; (2) the carrying cost of the capital investments Nicor Services has made in its business; and (3) costs relating to occupancy and employee related expenses. *Id.* at 48:1069-71. For example, AG/CUB argues that the information regarding these costs "is simply not relevant to an analysis of the profitability of GLCG," even though it would be necessary to take such information into account in analyzing the profitability of Nicor Services as a whole. AG/CUB Init. Br. at 16. There is no evidence in the record to support this argument other than AG/CUB's bald assertion.

## **7. Call Center Scripts are Clear and Accurate**

Staff and AG/CUB argue that the solicitation scripts used by call center representatives are misleading because they lead customers to believe that Nicor Gas will only perform repairs to gas leaks if the customer is enrolled in GLCG. Staff Init. Br. at 19-23; AG/CUB Init. Br. at 17-21. Yet AG/CUB concede that the scripts do not contain any statement that “the Nicor technician won’t perform the inspections or make any necessary repairs if the customer is not enrolled in the GLCG program.” AG/CUB Init. Br. at 18, 19. Likewise, Staff argues about the “absence of information” leading customers “to the mistaken conclusion that the services offered by GLCG are not available from Nicor Gas and only available to them if they sign up for GLCG.” Staff Init. Br. at 22. There is absolutely no evidence in the record that the scripts have confused even a single customer. Rather, Staff witness Sackett and AG/CUB witness Effron rely only on speculation. Thus, in order to reach the conclusion that the scripts are in any way misleading as requested by Staff and AG/CUB, the Commission would have to rely solely on the subjective inferences and impressions drawn by Staff witness Sackett and AG/CUB witness Effron from the scripts.

The Commission should disregard the unsupported arguments of Staff and AG/CUB given the unrefuted record evidence that Nicor Gas always seeks to ensure script clarity and accuracy. O’Connor Reb., Nicor Gas Ex. 2.0, 62:1379-80. The steps taken include reviews of proposed script changes by multiple personnel and a review of customer complaints. *Id.* at 62:1380-81. Even Mr. Sackett admits that Nicor Gas made a change to one of its scripts to notify potential customers of GLCG earlier in the call that they are purchasing a product from an affiliate. Sackett Dir., Staff Ex. 2.0, 27:642-28:650. In addition, Nicor Gas has numerous processes and procedures in place to ensure quality control of the customer solicitation process at both its call center and the center operated by IBT. O’Connor Reb., Nicor Gas Ex. 2.0, 59:1324-



61:1356. Mr. Sackett has expressly acknowledged that the scripts used at Nicor Gas' call center now give the disclosure regarding the offering of affiliate products before the solicitation is made for such products. May 23, 2011 Tr. at 310.

Moreover, the scripts simply present accurate facts and track the law that governs here. For example, the script AG/CUB quotes in its Initial Brief contains language stating that "the utility is only legally responsible to make the situation safe or make repairs to its own facilities." AG/CUB Init. Br. at 18. This language correctly reflects that Nicor Gas is not responsible to make repairs to customer facilities, O'Connor Reb., Nicor Gas Ex. 2.0, 62:1391-92, which Staff concedes is accurate. Staff Init. Br. at 19. The script language also correctly states the utility's legal duty under Illinois law, as set forth in *Adams v. Northern Illinois Gas Company*, 211 Ill. 2d 32, 48 (2004) and Nicor Gas' filed tariffs, Northern Illinois Gas Company, Ill.C.C. No. 16 – Gas, 3rd Revised Sheet No. 35.

The script also contains language stating that the property owner may have to hire an independent contractor to make repairs. AG/CUB Init. Br. at 18. This language correctly reflects that the customer may have to call a contractor to address a leak that is the responsibility of the customer. O'Connor Reb., Nicor Gas Ex. 2.0, 44:996. Further, the script contains language correctly reflecting that repairs may not occur right away. AG/CUB Init. Br. at 18; O'Connor Reb., Nicor Gas Ex. 2.0, 62:1392-93.

### **III. CONCLUSION**

The Initial Briefs of Staff and AG/CUB fail to rebut the showing made by the Joint Applicants that the Proposed Operating Agreement meets the requirements of Sections 7-101, 7-204 and 7-204A of the Act as fully supported by the evidence. The concerns raised by Staff and

AG/CUB regarding the GLCG product do not bear on the legal sufficiency or propriety of the Proposed Operating Agreement and, in all events, are entirely without merit.

In light of the law and facts set forth above and in the Joint Applicants' Initial Brief, the Commission should reject the requests of Staff and AG/CUB not to allow call center solicitation to continue under the Proposed Operating Agreement, particularly where their requests are motivated by unsubstantiated concerns about an unregulated product and they have failed to meet their burden to show that the call center solicitation services, which have been provided for more than a decade in accordance with Commission orders, are now not in the public interest. Accordingly, the Commission should approve the Proposed Operating Agreement with the Joint Applicants' proposed language for Section 2.2(e), which will continue to permit call center solicitation for Nicor Services' products like GLCG.

Dated: July 12, 2011

Respectfully submitted,

AGL RESOURCES INC., NICOR INC.,  
AND NORTHERN ILLINOIS GAS COMPANY  
D/B/A NICOR GAS COMPANY

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**CERTIFICATE OF SERVICE**

I, John E. Rooney, certify that I caused a copy of the Joint Applicants' Post-Trial Reply Brief Regarding Operating Agreement Issues to be served upon the service list in Docket No. 11-0046 on July 12, 2011.

/s/ John E. Rooney  
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John E. Rooney